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Application of Natural Justice before Classifying a Bank Loan Account as Fraudulent P.p:36-39

Pradeep Kumar Pandey*
*Associate Professor, Department of Law, Brahmanand P.G. College, Kanpur, (U.P), India.
Email: bipin05bhu@gmail.com

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"The lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud coupled with passing of a reasoned order on the objections addressed by the borrower."

-Hon'ble Sangeeta K. Vishen, J. in
Amit Dineshchandra Patel v. Reserve Bank of India

Abstract

The principles of natural justice, adopted in every legal system, are intended to ensure impartiality, fairness and justice in all judicial, quasi-judicial and administrative proceedings and it is equally applicable in the cases of banking system also. When a bank loan account is detected as fraudulent, the respective bank is under obligation to comply with the principles of natural justice. This paper unearths the scope of the principles of natural justice in case of classifying a loan account as fraudulent.

Introduction

The present era has witnessed the innovation and development in every walk of life which is the contribution of human intellect and labour. In fact, the human beings have done a lot for their survival and existence in varied ways but, at the same time, it is also correct, *inter alia*, that the society is facing a grave challenge in the form of financial criminal behaviour which does not adversely affect only respective financial institution rather the interests of the whole society is jeopardised. Some bank loan accounts are opened and operated with the purpose of committing fraud which, if not brought within the clutches of law within a reasonable time, there may be numerous hurdles in smooth functioning of financial activities. In such cases, the first requirement is early detection of such accounts and informing the regulatory bodies and law enforcement agencies so that effective action may be taken against fraudsters which will, in turn, safeguard the interests of society, in general, and lending banks, in particular. The lending banks have been expected from the Reserve Bank of India (RBI) to constitute such uniform effective mechanism wherein the cases of fraud can be easily and effectively detected and reported. At the same time, the issue of borrower's rights including right of reputation, right to reasonable opportunity to be heard, right to receive reasoned decision etc. needs to be taken care while detecting and investigating the criminal behaviour.

Principles of Natural Justice

Based on justice, equity and good conscience, the principles of natural justice have acquired a significant place in world legal system. These principles are evolved by the judiciary over a period of time as a part of rule of law. The well-established components of these principles include *nemo judex in causa sua* (no person shall be a judge in his own cause) and *audi alteram partem* (right to be heard). Reasoned decision (speaking order) is a new addition to these principles. In the case of forensic audit, the application of *audi alteram partem* and reasoned decision has been in discussion in legal fora.

Justice P.N. Bhagwati authoring the judgment for the majority in *Maneka Gandhi v. Union of India and another*, observed that "the *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise." He equated *audi alteram partem* rule with "fair play in action".